

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH CANDLER,

Plaintiff,

V.

No. 2:22-cv-1049 KJM CKD P

ORDER

D. GONZALES, et al.,

Defendants.

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 26, 2022, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 8. Plaintiff has filed objections to the findings and recommendations. ECF No. 11.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

The magistrate judge recommends denying plaintiff's request to proceed in forma pauperis because plaintiff's prior actions have been dismissed for failure to state a claim on at least three prior occasions. *See generally* ECF No. 8. Under 28 U.S.C. § 1915(g), "unless the

1 prisoner is under imminent danger of serious physical injury,” a prisoner may not proceed in
2 forma pauperis if three or more of the prisoner’s prior actions have been “dismissed on the
3 grounds that [they are] frivolous, malicious, or fails to state a claim upon which relief may be
4 granted.” Plaintiff objects by declaring only that none of the three prior actions was dismissed on
5 the grounds of being frivolous. ECF No. 11 at 2. Plaintiff does not assert there is an imminent
6 danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

7 Neither the magistrate judge nor this court has concluded plaintiff’s prior actions were
8 frivolous. Rather, the court finds three of plaintiff’s prior actions were dismissed for failure to
9 state a claim, barring the court from granting plaintiff’s request to proceed in forma pauperis. *See*
10 *El-Shaddai v. Zamora*, 833 F.3d 1036, 1043 (9th Cir. 2016) (finding a claim dismissed under
11 Federal Rule 12(b)(6) counts as a strike under 28 U.S.C. § 1915(g)).

12 Accordingly, IT IS HEREBY ORDERED:

- 13 1. The findings and recommendations filed August 26, 2022, are adopted in full;
14 2. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied; and
15 3. Plaintiff must pay the \$402 filing fee for this action within 14 days. Failure to pay the
16 filing fee will result in dismissal.

17 DATED: January 24, 2023.

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19 CHIEF UNITED STATES DISTRICT JUDGE
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